

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ERECKA R. FAUST, for C.F.,

Plaintiff,

vs.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

)
)
)
)
)
)
)
)
)
)
)

Case No. 4:07CV1035 SNL(LMB)

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

This is an action under 42 U.S.C. § 405(g) for judicial review of defendant's final decision denying plaintiff's application for Supplemental Security Income benefits under Title XVI of the Social Security Act. This cause was referred to the undersigned United States Magistrate Judge for a Report and Recommendation pursuant to 28 U.S.C. § 636(b). Currently pending is Defendant's Motion to Reverse and Remand with Suggestions in Support. (Document Number 20). Plaintiff has not filed a response to defendant's motion.

In his motion, defendant requests that the court reverse the decision of the Administrative Law Judge (ALJ) and remand this action pursuant to sentence four of 42 U.S.C. § 405(g). Defendant states that upon receipt of the court's remand order, the Appeals Council of the Social Security Administration will remand this case to an ALJ, who will be directed to secure a waiver of plaintiff's right to representation or in the alternative to allow plaintiff to have a representative at the hearing. The ALJ will also be directed to formally enter the evidence into the record and to

give plaintiff the opportunity to object to the evidence. Plaintiff will also be allowed the opportunity to cross-examine any medical expert who may testify at the request of the ALJ. Finally, the ALJ will be instructed to consider the evidence that was before him in this matter as well as any other additional evidence plaintiff wishes to submit. Defendant requests that the court enter a final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure reversing the decision of the ALJ and remanding this case to the Commissioner.

Sentence four of 42 U.S.C. § 405(g) provides that “[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for rehearing.” However, in order for the court to properly remand a case to the Commissioner pursuant to sentence four, the court must enter an order either affirming, modifying or reversing the Commissioner’s decision. See Brown v. Barnhart, 282 F.3d 580, 581 (8th Cir. 2002).

The undersigned believes that it is appropriate to reverse and remand this case in order to permit the Commissioner to take further action as requested in his motion.

Accordingly,

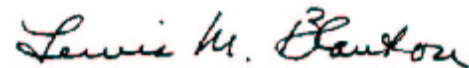
IT IS HEREBY RECOMMENDED that Defendant’s Motion to Reverse and Remand with Suggestions in Support (Doc. No. 20) be and it is **granted**.

IT IS FURTHER RECOMMENDED that the decision of the Commissioner be **reversed** and this case be **remanded** to the Commissioner for further proceedings pursuant to sentence four of § 405(g) for those reasons set forth in this report and recommendation.

IT IS FURTHER RECOMMENDED that upon remand, the court not retain jurisdiction of this matter.

The parties are advised that they have eleven (11) days, until XXX, to file written objections to this Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1), unless an extension of time for good cause is obtained, and failure to file timely objections may result in a waiver of the right to appeal questions of fact. See Thompson v. Nix, 897 F.2d 356, 357 (8th Cir. 1990).

Dated this 4th day of January, 2008.

A handwritten signature in blue ink that reads "Lewis M. Blanton". The signature is written in a cursive style with a horizontal line underneath the name.

LEWIS M. BLANTON
UNITED STATES MAGISTRATE JUDGE